

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT
CORPORATION, MITSUBISHI
AIRCRAFT CORPORATION AMERICA
INC., et al.,

Defendants.

No. 2:18-cv-1543 JLR

DEFENDANT MITSUBISHI AIRCRAFT
CORPORATION'S SUR-REPLY IN
OPPOSITION TO PLAINTIFF'S
UPDATED MOTION FOR
PRELIMINARY INJUNCTION

ORIGINAL NOTE ON MOTION
CALENDAR:
MAY 17, 2019

Mitsubishi Aircraft Corporation ("MITAC") respectfully moves pursuant to LR 7(g) to strike two significant and extraneous misrepresentations of fact in Bombardier's Reply to Defendant Mitsubishi Aircraft Corporation's Opposition to Bombardier Inc.'s Update Motion for Preliminary Injunction against Mitsubishi Aircraft Corporation, Marc-Antoine Delarche and Keith Ayre.

In MITAC's opposition papers, Duc Nguyen, a digital forensic examiner employed by FRONTEO, USA, explained that he had searched MITAC America network servers and the MITAC America laptop computers of Cindy Dorneval, Laurus Basson and Marc-Antoine Delarche. (Dkt. 178 at 1-4; Dkt 79 at 1-6). Mr. Nguyen explained under oath that his search has

1 uncovered no evidence that any of the 11 documents containing Bombardier's alleged trade
2 secrets is or ever has been present **on any** MITAC America server or company laptop. (Dkt. 178
3 at 2) ("This file name search analysis, combined with the analysis explained in my December 26,
4 2018, Declaration, has not identified a copy of any of the eleven Burns and Tidd documents on
5 any of the devices or servers I was provided or provided access to."); (Dkt. 79, Ex. E) (listing the
6 file names of the 11 Burns & Tidd documents).

7 Mr. Nguyen went on to explain, however, that one of the 11 documents is contained on
8 Cindy Dorneval's **personal computer**. (Dkt. 178 at 3) ("One of the Burns & Tidd documents
9 was present on Ms. Dorneval's personal computer: BM7002.02.15.02-Flight Performances.pdf.).
10 Ms. Dorneval provided Mr. Nguyen access to her personal computer because she occasionally
11 used her personal computer for Bombardier work (because Bombardier had never provided her
12 with a laptop computer). (Dkt. 64 at 2, 9). This document was stored on her personal computer
13 because Ms. Dorneval had saved it in her "career folder" in 2008, at a time when one of her
14 career goals was to progress to a career in flight testing. (*Id.* at 7)

15 Contrary to this, as well as Mr. Nguyen's clear statement that he has found **none** of the
16 11 Burns & Tidd documents on any MITAC America computer, Bombardier twice asserts in its
17 reply brief that MITAC's review uncovered one of the 11 documents on a "MITAC America
18 computer." (Dkt. 190 at 10 and 14). These statements are false.

19 Prior to filing this motion, counsel for MITAC met with counsel for Bombardier and
20 called the error to their attention and asked that Bombardier correct the misstatements. Counsel
21 for Bombardier later spoke with their client and responded that they "respectfully decline" to
22 correct the error. Declaration of James Sanders in Support of Defendant Mitsubishi Aircraft
23 Corporation's Sur-Reply in Opposition to Plaintiff's Updated Motion for Preliminary Injunction
24 ¶¶2-3, and Ex. A.

25 Lest there be any lingering doubts, MITAC submits with this sur-reply a supplementary
26 declaration from Mr. Nguyen explaining in detail that the computer containing the one Burns &

Tidd document is “a home computer owned by Ms. Dorneval” and that, contrary to Bombardier’s misrepresentations, his searches have found none of the 11 documents “on any MITAC America device or server.” Declaration of Duc Nguyen in Support of Defendant Mitsubishi Aircraft Corporation's Sur-reply to Bombardier's Response to Mitac's Opposition to Bombardier's Motion for Preliminary Injunction ¶¶ 3-4, 6.

Accordingly, MITAC respectfully asks the Court to strike the following sentence and the following clause, found on pages 10 and 14, respectively, of Bombardier’s reply brief:

And even employing these best efforts, they still uncovered that Defendant Cindy Dornéval affirmatively uploaded to her personal MITAC laptops Bombardier’s BM7002.02.15.02 – Flight Performances.pdf (Exhibit A to the Declaration of David Tidd, Dkt. # 8). (Declaration of Duc Nguyen, Dkt. # 178, ¶ 7.)

...

For example, and by no means limiting, one document misappropriated by Cindy Dornéval and stored on a MITAC America computer—by MITAC’s own admission (Nguyen Decl., Dkt. # 178, ¶ 7)

RESPECTFULLY SUBMITTED this 22nd day of May 2019.

s/ James Sanders

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on May 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

DATED this 22nd day of May, 2019.

s/ James Sanders

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